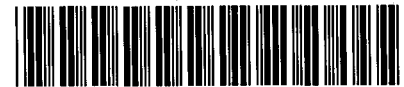


OPEN MEETING ITEM
ORIGINAL



0000041332

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



ARIZONA CORPORATION COMMISSION

DATE: March 21, 2006

DOCKET NO: T-01954B-05-0640

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amy Bjelland. The recommendation has been filed in the form of an Opinion and Order on:

BINGAMAN V. CITIZENS UTILITIES RURAL COMPANY, INC.

(COMPLAINT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MARCH 30, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

APRIL 4 AND 5, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

RECEIVED

2006 MAR 21 P 2:37

AZ CORP COMMISSION
DOCUMENT CONTROL

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE FORMAL
9 COMPLAINT AGAINST CITIZENS UTILITIES
10 RURAL COMPANY, INC. dba FRONTIER
11 CITIZENS UTILITIES RURAL COMPANY,
12 FILED BY BETTY BINGAMAN.

DOCKET NO. T-01954B-05-0640

DECISION NO. _____

OPINION AND ORDER

9 DATE OF HEARING: November 15, 2005 (Pre-Hearing Conference); January
10 23, 2006

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Amy Bjelland

13 APPEARANCES: Betty Bingaman, in propia persona;

14 Kevin Saville, Associate General Counsel, on behalf of
15 Citizens Utilities Rural Company, Inc. dba Frontier
16 Citizens Utilities Rural Company; and

17 Keith Layton, Staff Attorney, Legal Division, on behalf
18 of the Utilities Division of the Arizona Corporation
19 Commission.

20 **BY THE COMMISSION:**

21 On September 2, 2005, Betty Bingaman ("Complainant" or "Mrs. Bingaman") filed with the
22 Arizona Corporation Commission ("Commission") a formal complaint against Citizens Utilities
23 Rural Company dba Frontier Citizens Utilities Rural Company ("Frontier").

24 On October 3, 2005, Frontier filed a response to the Complaint.

25 On November 1, 2005, by Procedural Order, a Pre-Hearing Conference was set for the
26 purpose of defining the issues, discussing the procedures governing this matter and to set a hearing
27 date.

28 On November 15, 2005, the record of Complainant's informal complaint was docketed.

On November 17, 2005, by Procedural Order, a hearing was scheduled in this matter.

On January 6, 2006, Frontier docketed its Notice of Filing Testimony.

1 On January 12, 2006, Frontier filed its notice of errata.

2 On January 20, 2006, Complainant filed a response to Frontier's response to the Complaint.
3 Frontier filed its Motion to Permit Kevin Saville, Esq. to Appear *Pro Hac Vice* Pursuant to Rule 33,
4 Rules of Supreme Court.

5 On January 23, 2006, a full public hearing was held before a duly authorized Administrative
6 Law Judge of the Commission at its offices in Phoenix, Arizona. At hearing, Frontier's Motion to
7 Permit Kevin Saville, Esq. to Appear *Pro Hac Vice* was approved by the Administrative Law Judge.
8 At the conclusion of the hearing, the matter was taken under advisement pending issuance of a
9 Recommended Opinion and Order.

10 * * * * *

11 Having considered the entire record herein and being fully advised in the premises, the
12 Commission finds, concludes, and orders that:

13 **FINDINGS OF FACT**

14 **Background**

15 1. Frontier is a certificated telecommunications provider operating in Mohave County,
16 Arizona.

17 2. On September 2, 2005, Betty Bingaman, a property owner in Frontier's service
18 territory, filed a Complaint with the Commission against Frontier alleging that Frontier employees in
19 Kingman misquoted the price for telephone installation to her home. Complainant stated that she was
20 told by Frontier's customer service people that installation of a telephone line in her home would cost
21 only \$60.00, but in fact the final quote from Frontier was an estimated cost of approximately
22 \$7,800.00. Complainant contended that she should not have to pay the line extension charge and
23 requested relief in the form of installation of telephone service with no line extension charge or, in
24 the alternative, that Frontier purchase Complainant's home for \$155,818.00, the amount she paid for
25 her residence and improvements in reliance upon having telephone service at the \$60.00 charge.

26 3. On October 3, 2005, Frontier filed a response to the Complaint. Frontier stated that
27 upon receiving Complainant's order for telephone service on February 25, 2005, it conducted an
28 engineering study. The engineering study determined that based on the necessity to construct nine

1 aboveground telephone poles to run approximately 2,375 feet of telephone cable to Complainant's
2 home, the line extension charges would be \$9,200.00. Frontier asked that the Complaint be
3 dismissed.

4 4. The Pre-Hearing Conference was held on November 15, 2005, as scheduled.
5 Complainant appeared on her own behalf telephonically and Respondent appeared through counsel
6 telephonically. The parties stated that they would be able to go forward with a hearing after the first
7 of the year.

8 5. On November 15, 2005, the "record" of Complainant's informal complaint¹ was
9 docketed.

10 6. By Procedural Order issued November 17, 2005, a hearing was set to commence on
11 January 23, 2006, and the parties were given deadlines for filing testimony and exhibits.

12 7. On January 6, 2006, Frontier docketed its Notice of Filing Testimony.

13 8. On January 12, 2006, Frontier filed its notice of errata.

14 9. On January 20, 2006, Complainant filed a response to Frontier's response to the
15 Complaint. Frontier filed its Motion to Permit Kevin Saville, Esq. to Appear *Pro Hac Vice* Pursuant
16 to Rule 33, Rules of Supreme Court.

17 10. The hearing on this matter was held as scheduled on January 23, 2006 before a duly
18 authorized Administrative Law Judge of the Commission. Complainant appeared on her own behalf
19 and Frontier appeared through counsel.

20 11. Complainant testified on her own behalf. Complainant's response to Frontier's
21 response to the Complaint was entered as an exhibit.

22 12. Respondent presented the testimony of Charles Huttshell and Stephen Pebley and
23 entered two exhibits into the record.

24 13. The hearing ended after Complainant and Respondent concluded their evidentiary
25 presentations.

26 14. The Complaint arises from a February 25, 2005 request by Betty Bingaman for the

27 ¹ The "record" of Complainant's informal complaint includes the reports created by the Commission's Consumer Services
28 Division during discussions with both Complainant and frontier as Consumer Services attempted to resolve the issues
raised by Mrs. Bingaman informally.

1 provision of telephone service to her home located at 11078 South Alvis Road in Yucca, Arizona,
2 southeast of Kingman, Arizona, in the Golden Valley Ranchos Unit 9 South development, a map of
3 which is attached as Exhibit A. Complainant alleged that the previous owner of the property, her son,
4 Don Guthrie, made an inquiry on August 30, 2004 of Frontier regarding the cost to install a telephone
5 line and he received the answer that the total charge would be \$60.00. Complainant then requested
6 an estimate for service on February 25, 2005 and was again told the fee would be \$60.00. An order
7 for service was made of Frontier in May 2005. Mrs. Bingaman provided a written document
8 indicating a charge of \$60.00 on a form entitled "Frontier Communications". The document gives an
9 order number, phone number, and "Deposit/APAY" which indicates "Xfer Chg \$60.00".
10 Complainant also alleged that she has been treated in an unfair manner and differently from various
11 neighbors, who received telephone service without having to pay for the laying of underground lines.

12 15. Throughout the presentation of her case, Mrs. Bingaman did not dispute that Frontier's
13 Tariff provides for line charges consistent with the estimate given to her; however, she consistently
14 stated her dissatisfaction with the disconnect between the company's policies and what information
15 customer service representatives tell potential customer regarding installation fees and costs. She
16 testified the understanding she and Mr. Guthrie had from asking Frontier's customer service
17 representative was that if there was telephone service in the section of land on which the property was
18 located, the hookup fee would be \$60.00, regardless of whether Frontier had to "run the line quite a
19 ways." Tr. at 18. Mrs. Bingaman admitted that she did not present any plat drawings or maps to
20 Frontier's customer service representatives during her inquiry. *Id.* at 28.

21 16. The location of Mrs. Bingaman's home is reflected on Exhibit A, Block F, Lot 14.
22 Currently, hers is the only home on that street, although she has neighbors living within a few blocks
23 of her home within her development. Mrs. Bingaman testified that one of her neighbors, Glynn Ross,
24 is a Frontier subscriber whose home is located two lots away from her home, in Block G, Lot 13. She
25 further stated that another of her neighbors, located in Block F, Lot 5, "has been fighting with the
26 telephone company for years to get a phone." *Id.* at 17. Mrs. Bingaman also testified that she knows
27 of three or four other residents of Golden Valley Ranchos Unit 9 South who want telephone service
28 "that have just about given up" on getting it. *Id.* Mr. Stephen Pebley, who was in charge of

1 operations and engineering for Mohave County at the time relevant to Mrs. Bingaman's complaint,
2 stated that there is an issue with right-of-way in determining how to provide service to a particular
3 lot. *Id.* at 52. He testified that a certain area around lots in a subdivision such as Mrs. Bingaman's is
4 dedicated for right-of-way. *Id.* at 53. Therefore, Mr. Pebley stated, Frontier may not simply cross
5 another person's private property to provide telephone service. *Id.*

6 17. Mrs. Bingaman testified that she does have a cell phone; however, she stated that the
7 cell phone service is spotty where she lives. *Id.* at 29.

8 18. Regarding Complainant's testimony that both she and her son, the former owner of the
9 property,² were given a quote of \$60.00 for telephone service, Mr. Curt Huttshell, Manager,
10 Government and External Affairs for Frontier, testified that it is Frontier's policy that customer
11 service employees would look up the address of the property in question prior to determining the
12 service charge. Mr. Hutsell testified that the \$60.00 charge referred to by Complainant is actually a
13 combination of two tariff charges; a service order charge of \$30.00 and a line connection fee of
14 \$30.00. He further testified that it appeared that Mr. Guthrie failed to put in an order for service at
15 the time of his inquiry, which would have necessitated a computer check of Frontier's records for that
16 address and revealed that the property on Alvis Road did not already have telephone plant, and that
17 the cost would be more than the service fee for a home with existing plant.

18 19. Mr. Huttshell testified that the engineering study done in this case indicated that it
19 would be necessary to run telephone cable over approximately 2,375 feet and to construct nine
20 aboveground telephone poles to reach the Complainant's home. In May 2005, Frontier determined
21 that three power poles had been erected since the initial engineering study, reducing the number of
22 poles needed and thereby the total cost for Frontier to serve the Complainant's residence to
23 \$7,872.00. This is the status of the cost estimate to date.

24 20. A.A.C. R14-2-506(A)(1) requires telephone utilities to file with the Commission a
25 tariff that defines the conditions governing construction agreements. Pursuant to Frontier's
26 Telephone Services Tariff for Outside Plant Facilities, Section 14.1.1(a), charges in the tariff for
27

28 ² The record does not reflect whether Mr. Guthrie or Mrs. Bingaman gave the address of the property to the Frontier customer service representatives prior to when Mrs. Bingaman placed her order for service.

1 facility extensions are intended to prevent the unreasonable burdening of the body of existing
2 customers. The policy of not burdening existing customers with extension costs of new customers is
3 sound public policy, but must be applied in a non-discriminatory manner – especially if a potential
4 customer relies on representations of the company’s representatives.

5 21. Regarding her discrimination claim, Mrs. Bingaman testified that certain of her
6 neighbors had received telephone service installed at no cost to them. Mr. Pebley testified that at the
7 time of the request for service from Mrs. Bingaman’s neighbors in approximately 1998, there were
8 several inquiries from customers in the area for service. Mr. Pebley discussed consolidation of their
9 orders to share the cost. In that case, Frontier installed a microwave system to span eight miles from
10 Frontier’s closest central office to the development, and then cable was laid to the homes from the
11 utility pedestal to provide the service. Mrs. Bingaman’s home is located to the north by about five
12 lots and west by about two lots of the utility pedestal. Consistent with Frontier’s tariff, which
13 provides in Section 14.1.2(a) that it “will extend its lines to reach applicants provided that the cost of
14 constructing the required line extension will not exceed seven times the estimated annual exchange
15 revenue” from the applicants, Frontier did not charge the 1998 group for the line extension.

16 22. No evidence presented in this proceeding supports Complainant’s assertion that
17 Frontier is applying its approved tariff unfairly, unjustly, or in a discriminatory manner. We believe
18 that the policy set forth in Frontier’s tariff is reasonable – to insulate existing customers from the
19 costs associated with extending service to new customers and we will therefore dismiss the
20 Complaint.

21 23. Although we are dismissing the Complaint, we believe Mrs. Bingaman has raised
22 legitimate issues with respect to the information provided by Frontier’s customer service
23 representatives to potential customers. According to Mr. Pebley, the triggering event for Frontier to
24 make a determination of whether or not it has facilities to serve a customer is when the customer
25 places an order for service. *Id.* at 51. This policy, which in theory would provide a potential
26 customer with an accurate understanding of the cost for telephone service, is problematic because it
27 apparently links the accuracy of the estimate to placing an order for service. Instead, Frontier should
28 ask a potential customer for the location where service is intended to be provided in order to give an

1 accurate estimate of costs, regardless of whether an order is placed. According to Mrs. Bingman,
2 Frontier failed to do this, and as a result she relied to her detriment based on Frontier's
3 representations. Because there may be a number of customers who request service to areas remote
4 from current utility pedestals, we encourage Frontier to emphasize the necessity and importance of
5 ensuring that people requesting service in such a quickly growing area have an accurate
6 understanding of the cost for telephone service consistent with Frontier's tariff or, if this is
7 impossible due to the necessity for an engineering study to determine the actual cost, to ensure the
8 customer understands that, at a minimum, they will likely be required to pay far more than the
9 standard \$60.00 fee. Therefore, we will require that Frontier work with Staff to develop internal
10 procedures and practices that will ensure the accuracy of estimates of telephone utility installation as
11 discussed above. We will also require that Frontier inquire into the availability of Arizona Universal
12 Service Funds to lessen the financial burden of providing telephone service to customers within its
13 service area.

14 CONCLUSIONS OF LAW

15 1. Frontier is a public service corporation within the meaning of Article XV of the
16 Arizona Constitution and A.R.S. § 40-246.

17 2. Pursuant to A.R.S. § 40-246 and A.A.C. R14-3-106, the Commission has jurisdiction
18 over Frontier and the Complaint herein.

19 3. Frontier's Telephone Services Tariff for Outside Plant Facilities, as approved by
20 Decision No. 59810, is lawful, in compliance with A.A.C. R14-2-506(A), and applies to all telephone
21 line extension requests made to Frontier.

22 ORDER

23 IT IS THEREFORE ORDERED that the formal complaint against Citizens Utilities Rural
24 Company, Inc. dba Frontier Citizens Utilities Rural Mrs. Betty Bingaman shall be, and hereby is,
25 dismissed.

26 IT IS FURTHER ORDERED that Citizens Utilities Rural Company, Inc. dba Frontier
27 Citizens Utilities Rural shall work with Staff to develop practices and procedures to ensure that its
28 employees do not provide misinformation to consumers who inquire about pricing information for

1 telephone utility service and report back to the Commission on its progress on such practices and
2 procedures within 90 days of this Decision.

3 IT IS FURTHER ORDERED that Citizens Utilities Rural Company, Inc. dba Frontier
4 Citizens Utilities Rural shall inquire into the availability of Arizona Universal Service Funds to offset
5 the high cost of providing service to customers in its service area and report back to the Commission
6 regarding such availability within 90 days of this Decision.

7 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

9
10
11 CHAIRMAN

COMMISSIONER

12
13 COMMISSIONER

COMMISSIONER

COMMISSIONER

14
15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
16 Director of the Arizona Corporation Commission, have
17 hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this ____ day of _____, 2006.

20 BRIAN C. McNEIL
21 EXECUTIVE DIRECTOR

22 DISSENT _____

23
24 DISSENT _____

25 AB:mj

1 SERVICE LIST FOR: CITIZENS UTILITIES RURAL COMPANY, INC.

2 DOCKET NO.: T-01954B-05-0640

3 Betty Bingaman
4 11078 Alvis Road, Box 145
5 Yucca, AZ 86438

6 Kevin Saville
7 Associate General Counsel
8 Citizens Communications Company
9 2378 Wilshire Blvd.
10 Mound, MN 55364

11 Christopher Kempley, Chief Counsel
12 Legal Division
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
15 Phoenix, AZ 85007

16 Ernest G. Johnson, Director
17 Utilities Division
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington
20 Phoenix, AZ 85007

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

928-766-2591

L. Lynn
Ross

Bingamans

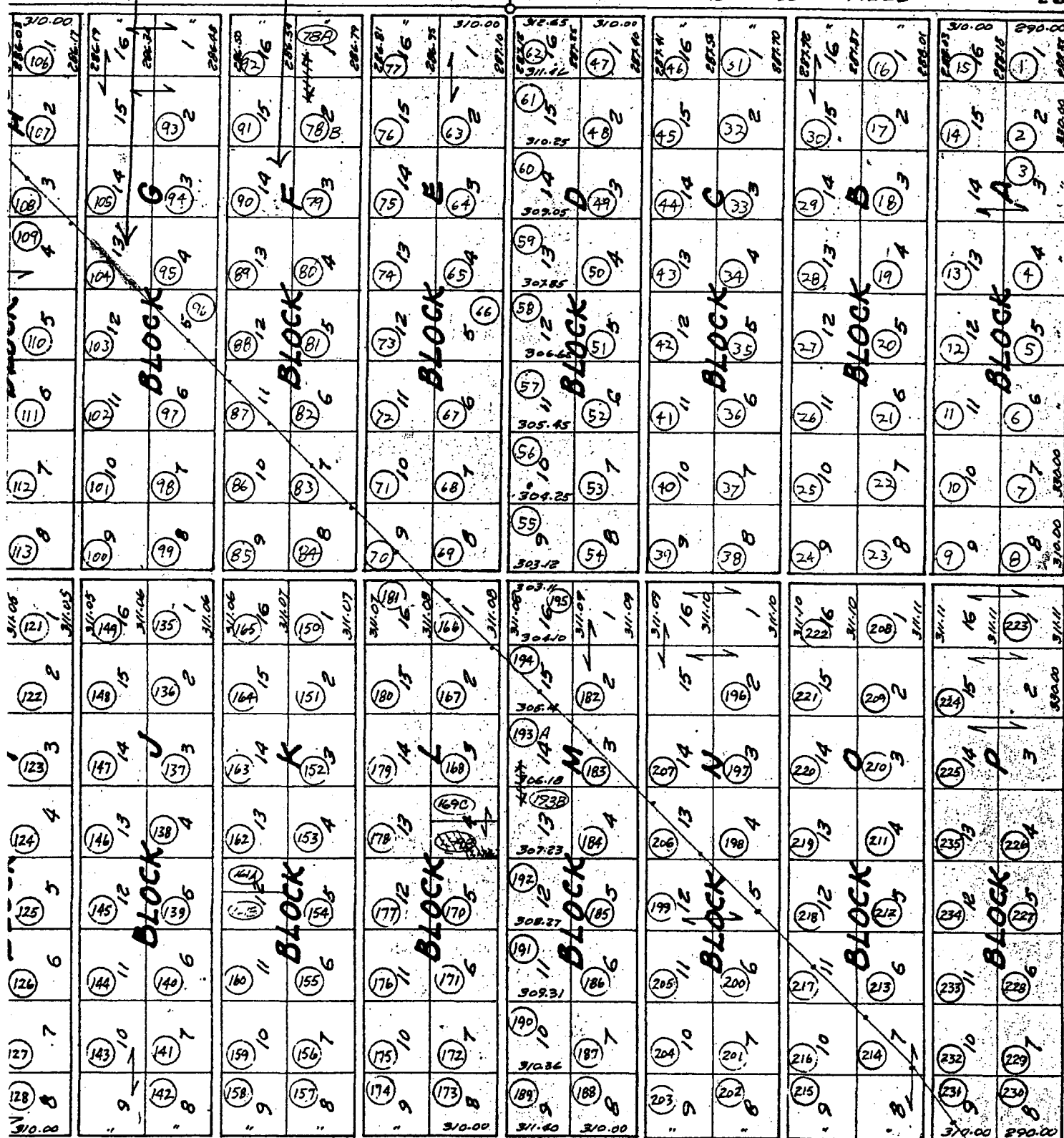
Power line

5287.82' WEST

(BLM)

5286.28' FIELD

26



5280.00' WEST (BLM.)

5282.75' FIELD

EID of S2
CUE 2085/82

Existing Citizens Utilities Power